

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PETER EVAN DRESEL.

CASE NO. C14-1665 MJP

Plaintiff,

## ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

V.

PENSION PLAN OF THE PACIFIC  
NORTHWEST LABORATORIES,  
BATTELLE MEMORIAL INSTITUTE.

Defendant.

The Court, having received and reviewed:

1. Defendant's Motion for Summary Judgment (Dkt. No. 14), Plaintiff's Response to Defendant's Motion for Summary Judgment (Dkt. No. 20), and Defendant's Reply in Support of Defendant's Motion for Summary Judgment (Dkt. No. 28);
2. Plaintiff's Cross-Motion for Summary Judgment (Dkt. No. 23), Defendant's Response to Plaintiff's Cross-Motion for Summary Judgment (Dkt. No. 28), and Plaintiff's Reply in Support of Plaintiff's Cross-Motion for Summary Judgment (Dkt. No. 29);

1 and all attached declarations and exhibits, makes the following ruling:

2 IT IS ORDERED that Defendant's motion for summary judgment is DENIED.

3 IT IS FURTHER ORDERED that Plaintiff's motion for summary judgment is

4 GRANTED.

5 **Background**

6 Plaintiff was hired by Defendant Battelle on October 5, 1992. On February 22, 2010 (at  
7 the age of 54), Plaintiff began the first of a series of three one-year leaves of absence from the  
8 company. Towards the end of the third year of the leaves of absence, Defendant advised  
9 Plaintiff that it did not have the funding to return him to his position. Following the expiration of  
10 the third leave of absence (February 21, 2013), Plaintiff did not return to work at Battelle.

11 In April 2013, Plaintiff inquired about early retirement benefits (a right which can accrue  
12 to "Members" of Defendant's Pension Plan ["the Plan"] between the ages of 55 and 65). An  
13 attorney for the Plan sent him a letter on April 15, 2013 advising him that

14 Because you did not return to employment with [Battelle] within three years of beginning  
15 your leave, your pension benefits will be determined based on your service through  
February 22, 2010 and your age on that day.

16 Litteral Decl., Ex. C at BA 1-2. Because he was 54 on February 22, 2010, Plaintiff was denied  
17 the right to the early retirement benefit. Plaintiff filed an internal appeal of the denial. Battelle  
18 (as the Plan Administrator), through their Vice President of Benefits (Ms. Litteral), denied the  
19 appeal in a letter dated August 7, 2013. (Litteral Decl., Ex. C at BA 5-40.)

20 **Discussion/Analysis**

21 Standard of review

22 *De novo review?*

23 The Plan grants the Plan Administrator discretion to interpret Plan provisions and  
24 determine who is eligible for benefits (as long as those decisions are not arbitrary or capricious).

1 (Dkt. No. 15-1, Ex. A, Plan §§ 12.1, 12.6.) In such cases, a reviewing court usually applies an  
 2 “abuse of discretion” standard of review. Abatie v. Alta Health and Life Ins. Co., 458 F.3d 955,  
 3 967 (9th Cir. 2006).

4 In the Plan, there is a provision for a “Committee:”

5 Battelle Memorial Institute shall appoint a Committee to be responsible for specific  
 6 duties not otherwise assigned to the Plan Administrator or reserved by the Battelle  
 7 Council, including but not limited to responsibility for claims appeal procedures as  
 8 provided for in Section 12.4.

9 Plan, § 12.2. Plaintiff argues that, because it was Ms. Litteral (not the Committee) who made the  
 10 decision to deny Plaintiff’s appeal, the Court should review her decision *de novo*. He asserts that  
 11 she was not authorized to decide the appeal and thus no deference should be accorded her  
 12 decision. *See Jebian v. Hewlett-Packard Co. Employee Benefits Organization Income Protection*  
 13 *Plan*, 349 F.3d 1098, 1105 (9th Cir. 2003)(no deference is owed a decision denying benefits  
 14 made by “a body other than the one authorized by procedures set forth in the benefits plan.”).

15 It is not a persuasive argument. On December 20, 2007, Battelle issued a memo entitled  
 16 “Delegation of Plan Administrator” transferring to Ms. Litteral all the functions of that role. The  
 17 memo of delegation sent to Ms. Litteral was intended to document

18 ...the delegation to you of Battelle’s duties and responsibilities under ERISA as Plan  
 19 Administrator for all Battelle sponsored employee benefits plans...  
 20 \* \* \*

21 ... [Y]our primary duties include:  
 22 \* \* \*

23 3. Paying benefits in accordance with the terms and conditions of the plans.

24 Def Mtn, Dkt. No. 15-2, Ex. B.

25 The Plan states clearly that the Committee is responsible only for “duties not otherwise  
 26 assigned to the Plan Administrator.” In the face of the blanket delegation to Ms. Litteral of all  
 27 the Plan Administrator responsibilities with a specified “primary duty” of overseeing the  
 28

1 payment of benefits, the Committee no longer had any responsibilities in this area and the Court  
 2 is required to accord some degree of deference to her decision.

3 *Abuse of discretion?*

4 Plaintiff argues further that, even if the Court rejects *de novo* review and opts for an  
 5 “abuse of discretion” standard, the application of that standard must be limited because of the  
 6 Plan Administrator’s conflicts of interest. He makes several arguments in this regard:

7 1. “Structural conflict of interest:” Any time a plan administrator is also the funding source  
 8 for the Plan’s benefits, there is a “structural conflict of interest.” Abatie, 458 F.3d at 965.

9 But in the absence of any evidence of malice, self-dealing or a history of “parsimonious  
 10 claim-granting,” this type of conflict creates a very low barrier. Id. at 968. Plaintiff’s  
 11 briefing is devoid of any such evidence, particularly any historical data indicating a  
 12 pattern of denying these sorts of claims. This factor has little impact on the deference  
 13 accorded this plan administrator under an abuse of discretion review.

14 2. Single decision-maker v. decision by committee: Plaintiff wants Battelle’s decision to  
 15 delegate these types of decisions to a “loyal decision-maker” rather than to a committee  
 16 to be considered as further evidence of a conflict of interest. Since there is nothing in the  
 17 Plan to prevent Battelle from appointing a committee comprised of other Battelle  
 18 employees, this factor does not weigh heavily against Defendant.

19 3. Insufficient independence: At the time that Plaintiff filed his response, the discovery he  
 20 had been provided raised some question in his mind as to whether Ms. Litteral had been  
 21 involved in the original decision by the Plan attorney to deny the early retirement  
 22 benefits. (See Pltf Response at 7-9.) Defendant responds that the appeal denial letter  
 23 from Ms. Litteral (Dkt. No. 15-3, Ex. C) demonstrates that she provided “her own

1 independent reasons" and gave no deference to the initial decision. (Def Reply at 4.)  
 2 The Court does not find this argument particularly compelling. More to the point,  
 3 Defendant also provides the interrogatory responses submitted to Plaintiff containing a  
 4 denial that Ms. Litteral had any involvement in the original decision. (See Dkt. No. 28-1,  
 5 at 9, Interrog. No. 12.)

6 The Court finds Defendant's interrogatory response to be determinative (for purposes of  
 7 this motion) on the issue of Ms. Litteral's involvement with the original decision regarding  
 8 Plaintiff's eligibility for early retirement benefits. Furthermore, in light of the ruling in  
 9 Plaintiff's favor, the Court finds the issue of the degree of Ms. Litteral's involvement in the  
 10 original decision to be non-determinative.

11 The Court finds that the abuse of discretion standard of review is appropriate here and  
 12 that Defendant abused its discretion in denying Plaintiff's early retirement benefits.

13 Early retirement benefits decision

14 Several provisions of the Plan come into play in analyzing the early retirement issue and  
 15 the merits of both sides' positions:

16 **§ 1.15 Early Retirement Age** means the later of age fifty-five (55) and completion of  
 17 ten (10) years of Credited Service for Vesting.

18 **§ 1.16 Early Retirement Date** means the first day of the month after the Member's  
 19 termination of employment with all Battelle Group Members, after attainment of Early  
 20 Retirement Age, but prior to the member's Normal Retirement Date.

21 (Ex. A, Plan at 20.)

22

23

24

1 Both sides agree that “early retirement” is available to “Members” (see Plan § 1.28<sup>1</sup>) and  
 2 that a Member can be either an Eligible Employee or “former Eligible Employee,” as defined by  
 3 the Plan. The definitions of those terms are not necessary to the Court’s analysis as both sides  
 4 agree that, at the very least, Plaintiff was a “former Eligible Employee” when he sought his early  
 5 retirement benefits.

6 Defendant’s position can be summarized as: Plaintiff’s last day as an “Eligible  
 7 Employee” was February 21, 2010 (since he did not return to active employment at the  
 8 expiration of his 3-year leave of absence); Plaintiff was 54 at that time. Plaintiff had to be 55 to  
 9 qualify for the Early Retirement Benefit (there is no dispute that Plaintiff had completed 10 years  
 10 of Credited Service); because “he was no longer a Battelle employee when he reached that age...  
 11 he had no employment from which *to* retire.” (Dkt. No. 28, Def Reply at 5; emphasis in  
 12 original.)

13 It is a flawed analysis proceeding from a faulty assumption that “retirement” is a process  
 14 which can only occur at the point when an employee ceases active employment. There is  
 15 another way of looking at the concept of “retirement” in the context of ERISA that conforms to  
 16 both the language of the Plan and the case law, and under that concept of “retirement”  
 17 Defendant’s analysis fails.

18 The ERISA case law views “retirement” as the point at which an employee *or former*  
 19 *employee* becomes eligible for certain benefits to which they are entitled under the pension plan.  
 20 A case in point is Canseco v. Construction Laborers Pension Trust, 93 F.3d 600 (9th Cir. 1996).

21  
 22 <sup>1</sup> “**Member** means an Eligible Employee who has met all the participation requirements of this  
 23 Plan, has become enrolled in the Plan and who has an Accrued Benefit under the Plan. Member  
 24 also includes a former Eligible Employee with an Accrued Benefit under the Plan.” (Ex. A, Plan  
 at 17.)

1 After 30 years in the construction industry, Canseco became permanently disabled and retired at  
 2 the age of 56. Through an erroneous interpretation of his pension plan, Canseco was informed  
 3 that he did not meet the eligibility requirement for normal retirement benefits and so he did not  
 4 apply. In 1987, the Ninth Circuit held the pension plan's eligibility requirements to be arbitrary  
 5 and capricious and required the trustees of the plan to lower the eligibility requirements. (Ponce  
 6 v. CLPT for Southern Calif., 774 F.2d 1401 (9th Cir. 1985); *cert. denied*, 479 U.S. 890 (1986).)

7 Believing he now met the lowered standards, Canseco applied for pension benefits. What  
 8 happened next describes perfectly how the concept of "retirement benefits" functions in ERISA:

9 However, after paying Canseco his initial benefits, the Trustees discovered that the  
 10 records were erroneous, and that Canseco had actually accrued nearly 23 years of service  
 11 before becoming disabled. Because Canseco had attained well over the 15 years required  
 12 for eligibility, the Trustees concluded *he had been eligible for normal retirement benefits*  
 13 of \$988 a month beginning in 1981, *when he reached age 62*, the minimum age required  
 14 for eligibility under the [pension] plan.

15 Canseco, 93 F.3d at 602 (emphasis supplied).

16 In other words, eligibility for retirement benefits under the pension plan was not  
 17 calculated at the date the employee ceased working (i.e., Canseco could not be denied "normal  
 18 retirement benefits" because he stopped working before he reached age 62), but rather was  
 19 calculated when he reached the eligible age regardless of his employment status with the  
 20 company.

21 The language of the Plan at issue here supports this reading of the term:

22 **§ 1.45 Retirement** means a *Member's election of commencement of benefits* under this  
 23 plan in the form of his Normal Retirement Benefit, Early Retirement Benefit, Deferred  
 24 Vested Benefit, Late Retirement Benefit, or Disability Retirement Benefit, as the case  
 25 may be.

26 (Ex. A, Plan at 20.) (emphasis supplied). Since "Member" includes "former Eligible Employee,"  
 27 there is clearly no contemplation within the plan that an applicant for retirement benefits needs to  
 28

1 be in active employment (i.e., not have been “terminated”) at the point where he or she becomes  
 2 eligible for the benefit. After the point when Plaintiff reached the age of 55 (and before he  
 3 reached 65), he was entitled to “elect the commencement” of his Early Retirement Benefit,  
 4 assuming that he met all other requirements. The Court finds that Plaintiff did meet the other  
 5 requirement (i.e., ten years of Credited Service), and should have been granted that benefit under  
 6 the Plan.

7 Interestingly, Defendant gives some indication in its original motion that it has a similar  
 8 understanding of how this aspect of the Plan functions. In a footnote to its conclusion that  
 9 Plaintiff was not entitled to an Early Retirement Benefit, Defendant states:

10 The fact that Dresel was not entitled to an Early Retirement Benefit does not mean that he  
 11 was deprived of post-employment benefits under the Plan, it simply means that he was  
 not entitled to that particular benefit.

12 Def Mtn at 7, n. 4.

13 Defendant justifies this distinction by arguing that, because Plaintiff never returned to  
 14 active employment following the commencement of his leave of absence, he was “terminated”  
 15 from employment as of February 22, 2010 (the date he began the first of three one-year leaves of  
 16 absence) and thus his failure to reach age 55 while still actively employed disqualifies him from  
 17 the early retirement benefit. This argument likewise fails to persuade. For one thing, the Plan  
 18 nowhere defines what constitutes “termination” or under what circumstances (other than the  
 19 obvious situation of being fired from the job) an employee is considered “terminated.”  
 20 Defendant provides no further guidance in statute or case law to assist the Court in that analysis.

21 More to the point, however, the Court agrees with Plaintiff: it does not matter, for  
 22 purposes of determining eligibility for early retirement benefits, when he was “terminated.” To  
 23 review the terms of the Plan,

**§ 1.15 Early Retirement Age** means the later of age fifty-five (55) and completion of ten (10) years of Credited Service for Vesting.

**§ 1.16 Early Retirement Date** means the first day of the month after the Member's termination of employment with all Battelle Group Members, after attainment of Early Retirement Age, but prior to the member's Normal Retirement Date.

(Ex. A, Plan at 20.) The Court notes that § 1.15 contains no requirement of “active employment,” thus Plaintiff attained “Early Retirement Age” on the day that he turned 55. His “Early Retirement Date” is measured by two interdependent criteria: (1) “the first day of the month after the Member's termination of employment”; (2) “after attainment of Early Retirement Age, but prior to the member's Normal Retirement Date.”<sup>2</sup> It does not matter whether the Court considers Plaintiff terminated as of February 22, 2010 or February 22, 2013; he attained his Early Retirement Date under either calculation and (as demonstrated by the Canseco opinion) became eligible to “elect the commencement of benefits” at that point.

Defendant attempted at oral argument to introduce an argument heretofore unheard in this litigation: that Plaintiff was in fact eligible, not for an Early Retirement Benefit, but instead for a “Deferred Vested Benefit” under § 4.3 of the Plan:

**§ 4.3 Deferred Vested Benefit.** A Member who terminates employment with all Battelle Group Members prior to qualifying for either an Early Retirement Benefit or a Normal Retirement Benefit shall be eligible for a Deferred Vested Benefit.

(Ex. A, Plan at 28.) The argument is unavailing for two reasons. First (as demonstrated *supra*), Plaintiff did qualify for an Early Retirement Benefit and therefore did not need access to this alternate form of pension. The fact that Plaintiff was never offered a Deferred Vested Benefit at

<sup>2</sup> The only other requirement is that Plaintiff have been a “Member” at that point – since both sides agree that he was a “former Eligible Employee” throughout the leave of absence period, he qualifies as a Member under the terms of the Plan.

1 any time during his post-employment process with Defendant further demonstrates the  
2 irrelevance of this option to these proceedings.

3 Second, “[t]he general rule... in [the Ninth Circuit] and in others, is that a court will not  
4 allow an ERISA plan administrator to assert a reason for denial of benefits that it had not given  
5 during the administrative process.” Harlick v. Blue Shield of California, 686 F.3d 699, 719-20  
6 (9th Cir. 2012). The rationale underlying this rule is found in a line of cases holding that

7 [r]equiring that plan administrators provide a participant with specific reasons for denial  
8 “enable[s] the claimant to prepare adequately for any further administrative review, as  
well as appeal to the federal courts.”

9 Id. at 720 (quoting Mitchell v. CB Richard Ellis Long Term Disability Plan, 611 F.3d 1192, 1199  
10 n. 2 (9th Cir. 2010) and Jebian, 349 F.3d at 1104 (9th Cir. 2003)). The fact that Defendant raised  
11 the “Deferred Vested Benefit” defense for the first time in oral argument (having had 72 pages of  
12 briefing and an entire administrative appeal process to do so earlier) underscores the wisdom of  
13 this requirement.

14 **Conclusion**

15 Plaintiff was a qualified Member under the terms of the Plan who reached Early  
16 Retirement Age and, following attainment of his Early Retirement Date, submitted a legitimate  
17 request for his Early Retirement Benefit. The Court finds that it was an abuse of discretion for  
18 Defendant to deny that request. Accordingly, the Court GRANTS Plaintiff’s motion for  
19 summary judgment and enters a declaratory judgment declaring him entitled to his early  
20 retirement benefits.

21 Defendant’s motion for summary judgment is DENIED. A judgment granting the  
22 declaratory judgment sought by Plaintiff will be entered forthwith.

23

24

The clerk is ordered to provide copies of this order to all counsel.

Dated July 9, 2015.

  
\_\_\_\_\_  
Marsha J. Pechman  
United States District Judge